

2425
No. 10964

United States
Circuit Court of Appeals
For the Ninth Circuit.

SIVEAR WILLARD LINDSTROM,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.


Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington
Southern Division

FILED

APR 23 1945

PAUL P. O'BRIEN,
CLERK



Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov

No. 10964

United States
Circuit Court of Appeals
For the Ninth Circuit.

SIVEAR WILLARD LINDSTROM,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington
Southern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Affidavit of S. J. O'Brien, Appellant's Counsel 14

Appeal:

Bond on 16

Certificate of Clerk to Transcript of Record on 23

Notice of 10

Notice of Election to Adopt Assignments of Errors as Points on 84

Assignment of Errors 20

Bill of Exceptions (Defendant's) 25

Certificate and Order of Judge (DC) re Bill of Exceptions 83

Exhibits for the Defendant:

A-4—Letter, July 29, 1944, Mr. Sivear Willard Lindstrom from L. V. Boardman, Federal Bureau of Investigation 51

A-5—Letter, Aug. 11, 1944, Mr. Ralph M. Rogers, Attorney, Leland V. Boardman, Federal Bureau of Investigation 67

Index	Page
Bill of Exceptions (Defendant's)—(Contd.)	
Exhibits for Plaintiff:	
8—Order to Report for Preinduction Physical Examination, Jan. 31, 1944	31
10—Order to Report for Preinduction Physical Examination February 28, 1944	34
13—Order to Report to Local Board for Induction	39
18—Telegram, President of the United States, signed S. W. Lindstrom..	77
Witnesses for Defendant:	
Lindstrom, Mrs. S. W.	
—direct	45
—cross	46
—redirect	48
—recross	48
Lindstrom, Sivear Willard	
—direct	49
—cross	53, 66
—redirect	67, 70
—recross	69
Mann, Earl D.	
—direct	70
—cross	73

Index

Page

Bill of Exceptions (Defendant's)—(Contd.)

Witnesses for Plaintiff:

Armsted, Frank Robert

—rebuttal, cross 80, 82

Chastek, Chester J.

—direct 78

—cross 80

De Long, Mrs. Jean

—direct 43

—cross 44

—redirect 48

—recross 48

Schonborn, Jean

—direct 26

—cross 41, 74

—redirect 43, 75

Bond on Appeal 16

Certificate and Order of Judge (DC) re Bill
of Exceptions 83

Certificate of Clerk to Transcript of Record
on Appeal 23

Hearing re Motion for New Trial 10

Indictment 2

Judgment and Sentence 5

Motion for Extension of Time to File Pro-
posed Bill of Exceptions 13

Index	Page
Motion for New Trial	7
Names and Addresses of Attorney's of Record	1
Notice of Appeal	10
Notice of Election to Adopt Assignments of Errors as Points on Appeal	84
Order Denying Motion for New Trial.....	10
Order Extending Time to File Bill of Ex- ceptions	16
Verdict	4

COUNSEL OF RECORD

STEPHEN J. O'BRIEN, ESQ.

1516 Puget Sound Bank Building, Tacoma,
Washington

RALPH M. ROGERS, ESQ.

1205 Rust Building, Tacoma, Washington
Attorneys for Defendant-Appellant

J. CHARLES DENNIS, ESQ.

United States Attorney

HARRY SAGER, ESQ.

Assistant United States Attorney

324 Federal Building, Tacoma, Washington
Attorneys for Plaintiff-Appellee.

United States District Court, Western District
of Washington, Southern Division

July, 1944, Term

No. 15653

UNITED STATES OF AMERICA,
Plaintiff,
vs.

SIVEAR WILLARD LINDSTROM,
Defendant.

INDICTMENT

Vio. Selective Training & Service Act of 1940, and
the Rules and Regulations pursuant thereto

United States of America,
Western District of Washington
Southern Division—ss.

The grand jurors of the United States of America being duly selected, impaneled, sworn, and charged to inquire within and for the Southern Division of the Western District of Washington, upon their oaths present:

COUNT ONE

That Sivear Willard Lindstrom, whose true name other than as given is to these grand jurors unknown, on or about the 13th day of May, A. D. 1944, and continuing to the date of this indictment, at Puyallup, Washington, then and there being, did then and there knowingly fail and neglect and refuse to perform a duty required of him under the Selective Service Training and Serv-

ice Act of 1940, and the rules and regulations thereunder, in that he, the said Sivear Willard Lindstrom, did knowingly, wilfully, unlawfully and feloniously fail, neglect and refuse to present himself for induction into the United States armed forces at the time and place specified, when directed to do so by the Selective Service Board No. 1, Pierce County, Puyallup, Washington, having theretofore been directed by said Board so to do, the said Board then and there having authority to make such direction of induction, and he, the said Sivear Willard Lindstrom, [1*] then and there being a selected man as defined in said Act, and the Rules and Regulations thereunder, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

J. CHARLES DENNIS

United States Attorney

HARRY SAGER

Assistant United States Attorney

INDICTMENT

Violation: Selective Training and Service Act of 1940, and the Rules and Regulations thereunder.

A True Bill,

O. F. LAGASSE,

Foreman

J. CHARLES DENNIS

United States Attorney

*Page numbering appearing at foot of page of original certified Transcript of Record.

Copy endorsed:

Presented to the Court by the Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and Filed in the U. S. District Court Oct. 25, 1944, Judson W. Shorett, Clerk. By Gladys Chitty, Deputy [2]

[Title of District Court and Cause]

VERDICT

We, the jury empanelled in the above-entitled cause, find the defendant, Sivear Willard Lindstrom is Guilty as charged in Count I of the Indictment herein.

Dated this 6 day of December, 1944.

(Signed) BENJAMIN ROTH

Foreman

Recommend leniency

[Endorsed]: Filed Dec. 6, 1944 [3]

United States District Court, Western District
of Washington, Southern Division

No. 15653

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SIVEAR WILLARD LINDSTROM,

Defendant.

JUDGMENT AND SENTENCE

Comes now on this 2nd day of January, 1945, said defendant, Sivear Willard Lindstrom, into open court with his attorneys, S. J. O'Brien and Ralph Rogers, for sentence, after having been found guilty of the offense charged in Count I of the Indictment herein by verdict of a jury duly and regularly empanelled to hear the said cause, and being informed by the court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says, save as he before hath said.

Wherefore, by reason of the law and the premises, it is

Ordered and Adjudged by the Court that the said defendant, upon the verdict of the jury, is guilty as charged in Count One of the Indictment herein, and that he be committed to the custody of the Attorney General of the United States of

America for imprisonment in such penal institution as the Attorney General of the United States or his authorized representative may by law designate for the period of Fifteen (15) Months. [4]

And the said defendant is hereby remanded into the custody of the United States Marshal for this District for delivery to the Warden, Superintendent or other person in charge of such institution as the Attorney General of the United States may by law designate for the purpose of executing said sentence. This judgment and sentence for all purposes shall take the place of commitment, and be recognized by the Warden or Keeper of any Federal Penal Institution as such.

Done in Open Court this 2nd day of January, 1945.

CHARLES H. LEAVY

United States District Judge.

Presented by:

HARRY SAGER,

Assistant United States

Attorney

Violation: Selective Training & Service Act of 1940, and the Rules & Regulations pursuant thereto.

[Endorsed]: Filed Jan. 2, 1945. [5]

[Title of District Court and Cause]

MOTION FOR NEW TRIAL

Comes now the defendant, Sivear Willard Lindstrom, and moves this Honorable Court on the records and files herein for an order granting him a new trial in the above entitled action upon each of the following grounds:

I.

That the verdict of the jury is against the law and is not supported by the evidence.

II.

That the Court committed numerous errors in ruling upon the admissibility of evidence, all of which were highly prejudicial to the defendant and were duly excepted to by him, including the following:

1. The Court erred in admitting, over the objection of the defendant on the ground that it was incompetent and had not been properly identified, that certain telegram purportedly sent by the defendant to the President of the United States.

2. That the Court erred in permitting the District Attorney to examine the witness, Jean Schonborn, over the [6] objections of the defendant, relating to matters of classification and changes in classification as a registrant under the Selective Service Act in the year 1941, and particularly in permitting the District Attorney to show that the

defendant had been classified as 1-A and had thereafter procured a deferment and had his classification changed; that said testimony was duly objected to on the ground of its being irrelevant, immaterial and incompetent and it was highly prejudicial to the defendant.

3. The Court erred in rejecting the defendant's offer of proof, by which he offered to prove that in August, 1944, he called upon his attorney and had said attorney write a letter for him to Mr. Boardman, with copies to certain officials administering the Selective Service Act and in refusing to permit the defendant to produce said letter in evidence.

III.

That there was misconduct on the part of the jury in that upon interrogation of Mr. John Holland, called as Juror No. 12, said juror made statements in open Court and before all the other jurors to the effect that he had sons in the Service and would be prejudiced against anyone charged with violating the Selective Service Act, and that such a person would have two strikes against him from the start.

IV.

That the Court erred and abused its discretion in admonishing and criticizing all jurors in open Court that they should not have prejudice in such a case as the direct effect and result of the critical statements made by the [7] Court would be and were to restrain any juror from revealing his prejudice to the Court and the defendant and at the time it

clearly appeared that there were persons with prejudice because two jurors had already been excused by the Court because of their admissions in open Court that they were prejudiced against the defendant in this case.

V.

That the Court erred in giving certain instructions duly excepted to at the time by the defendant.

VI.

That the Court erred in refusing to give instructions requested by the defendant, and the failure to give said instructions being excepted to by the defendant.

S. J. O'BRIEN

RALPH M. ROGERS

Attorneys for the Defendant

Copy received Dec. 8, 1944.

HARRY SAGER,

Asst. U. S. Atty.

[Endorsed]: Filed Dec. 8, 1944 [8]

In the United States District Court, Western District of Washington, Southern Division.

RECORD OF PROCEEDINGS

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division thereof on the 22nd day of December, 1944, the Honorable

Charles H. Leavy, U. S. District Judge, presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court, to-wit:

No. 15653

[Title of Cause]

RECORD OF HEARING RE MOTION FOR
NEW TRIAL

Now on this 22nd day of December, 1944, this cause comes on for hearing on motion for new trial. Harry Sager, U. S. Attorney, represents the Government. Defendant is in court represented by counsel, S. J. O'Brien and Ralph Rogers. Argument is had on motion for new trial by Mr. O'Brien and Mr. Rogers. The Court now denies motion for new trial and allows an exception. * * * [8a]

[Title of District Court and Cause]

NOTICE OF APPEAL

Name and address of appellant: Silvear Willard Lindstrom, 2801 Portland Avenue, Tacoma, Washington.

Name and address of appellant's attorney: S. J. O'Brien, 1516 Puget Sound Bank Bldg., Tacoma, Washington.

Offense: Violation of the Selective Training and Service Act of 1940 and the rules and regulations thereunder.

Date of Judgment: January 2, 1945.

Brief description of judgment and sentence: "That defendant be committed to the custody of the Attorney General of the United States for imprisonment in such penal institution as the Attorney General of the United States or his authorized representative may by law designate for the period of 15 months." Name of prison where now confined if not on bail: On bail.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above-mentioned on the grounds set forth below.

SILVEAR WILLARD

LINDSTROM

Appellant.

Dated this 3rd day of January, 1945.

GROUND OF APPEAL

I.

Errors committed by the trial court in overruling objections by the defendant to evidence offered by the plaintiff, which were duly excepted to by defendant and particularly including the following:

(a) The reception in evidence over objection of the appellant of a purported telegram alleged to have been sent by appellant to the President of the United States relating to defendant's selective service status, which telegram was not identified by any official certificate or by any persons who had knowl-

edge that said telegram had been received by the President or had been sent by the defendant.

(b) Error committed, over objection by the defendant, in permitting a witness for the plaintiff to testify generally concerning the classification and draft status in 1941, 1942, and 1943, and particularly in permitting said witness to testify that defendant had been classified 1-A, and thereafter procured a deferment and had his classification changed.

(c) Error committed by the trial court in rejecting the defendant's offer to prove that in August, 1944, his attorney, by his direction, wrote a letter to one Boardman, an agent of the F.B.I., in response to a letter written by Boardman, which letter referred to the attitude of the defendant with reference to his selective service status.

II.

Error committed by the trial court during the course of the selection of the Jury, under the following circumstances: John Holland, a prospective Juror, in response to a general question submitted by the Court to the Jurors drawn, and previous to any examination by the defendant's counsel, stated [10] in open Court, that he would be prejudiced against anyone charged with violating the Selective Service Act, and that such person would have two strikes against him from the start. One other Juror made a similar statement. Thereupon the Court, in the presence of the entire panel, admonished all the Jurors that they should not have

prejudice of this nature in such a case. The effect of the criticism and admonishment thus rendered by the Court was to prevent defendant's counsel from thereafter developing the existence of prejudice on the part of any other Jurors, and thereby preclude the intelligent exercise by defendant's counsel of his preemptory right of challenge.

III.

Error committed by the Court in refusing to give instructions requested in writing by the defendant.

IV.

Error committed by the Court in giving certain instructions duly excepted to by the defendant previous to the retirement of the Jury.

V.

Error committed by the Court in denying defendant's motion for a new trial and in entering a judgment and sentence upon the verdict of the Jury.

Copy received this 3rd day of January, 1945.

HARRY SAGER

Assistant U. S. District Atty.

[Endorsed]: Filed January 3, 1945 [11]

[Title of District Court and Cause.]

MOTION FOR EXTENSION OF TIME TO FILE PROPOSED BILL OF EXCEPTIONS

Comes now the appellant herein and moves the Court under the provisions of Rule 9 of the Crim-

inal Appeals Rules that the time within which the appellant may file his proposed Bill of Exceptions herein be extended for a period of not less than thirty days.

This motion is based upon the affidavit of S. J. O'Brien, which is attached hereto and by reference made a part hereof, and upon the records and files herein.

S. J. O'BRIEN

Attorney for Appellant

[Endorsed]: Feb. 1, 1945. [12]

[Title of District Court and Cause]

AFFIDAVIT

State of Washington

County of Pierce—ss.

S. J. O'Brien, being first duly sworn on oath deposes and says: I am attorney for the appellant herein and on his behalf am prosecuting an appeal to the Circuit Court of Appeals of the Ninth Circuit from a certain final judgment of conviction entered herein against the appellant on the 2nd day of January, 1945.

As appears from the Notice of Appeal on file herein, the assignments of error which will be filed by the appellant in connection with the prosecution of such appeal will make it necessary to prepare and have included in the record a substantial portion of the evidence and the record and pro-

ceedings taken at the trial, which the appellant is not able to do from written notes taken by affiant during the progress of the trial. Acting on behalf of the appellant affiant on the 2nd day of January, 1945, ordered from Russell N. Anderson, the court reporter who reported the proceedings at said trial, a transcript of such proceedings, and requested that such transcript be forthwith and immediately prepared. The said Russell N. Anderson, however, during [13] a substantial portion of the time since said order, has been continuously engaged in reporting trials and proceedings in this court and has not been able to comply with affiant's request until the 20th day of January, 1945, when he furnished affiant with a typewritten transcript of such proceedings. That for such reason, which is not on account of any fault of either appellant or affiant, it is not possible to prepare and file in this court a proposed bill of exceptions and that a period of not less than thirty (30) days is reasonably required in which to prepare and file such proposed bill of exceptions.

S. J. O'BRIEN

Subscribed and sworn to before me this 24th day of January, 1945.

J. L. SNAPP

Notary Public in and for the State of Washington,
residing at Tacoma. [14]

[Title of District Court and Cause]

ORDER

Upon motion of the appellant,

It Is Ordered, that the time within which appellant may file his proposed Bill of Exceptions herein be and the same is hereby extended to the 2nd day of March, 1945.

Done in open Court this 1st day of February, 1945.

CHARLES H. LEAVY

District Judge.

Approved:

HARRY SAGER

Asst. U. S. District Attorney

[Endorsed]: Filed Feb. 1, 1945. [15]

[Title of District Court and Cause]

BAIL BOND UPON APPEAL

Know All Men By These Presents:

That I, Sivear Willard Lindstrom, as Principal, having deposited the sum of Fifteen Hundred (\$1500) and No/100ths Dollars, in cash, with the Clerk of the United States District Court, Southern Division, Tacoma, Washington, for bail on appeal, is held and firmly bound unto the United States of America in the full and just sum of Fifteen Hundred (\$1500.00) Dollars, to be paid to the United States of America, to which payment, well and truly

to be paid, I bind myself, my heirs, executors, administrators, successors and assigns, and the said sum of Fifteen Hundred (\$1500.00) Dollars, entirely by these presents.

Scaled hereinbelow with my seal and dated this 3rd day of January, in the year of our Lord one thousand nine hundred and forty-five.

Whereas, in the District Court of the United States for the Western District of Washington, Southern Division, in the case pending in said Court between United States of America, as plaintiff, and Sivear Willard Lindstrom, as defendant, being numbered 15653 of the records of the office of the Clerk of said Court, the jury returned a verdict of guilty against the said Sivear Willard Lindstrom, adjudging him guilty as charged on Count 1 of the indictment in *said* [16] *charging* him with violation of the Selective Training & Service Act of 1940, and the rules and regulations thereunder; and

Whereas, the said Sivear Willard Lindstrom was thereafter and on the 2nd day of January, 1945, duly sentenced by the Court to the custody of the Attorney General of the United States, to be confined in some penitentiary, designated by the Attorney General, for the period of fifteen (15) months, and that formal judgment and sentence having been filed in the office of the Clerk of the above entitled Court against the said Sivear Willard Lindstrom; and

Whereas, the said Sivear Willard Lindstrom, principal herein, desires to appeal from such judg-

ment and sentence, so rendered in the above entitled cause against him, to the United States Circuit Court of Appeals for the Ninth Circuit; and

Whereas, the said Sivear Willard Lindstrom, principal, intends to diligently pursue all steps in prosecuting an appeal from the said judgment and sentence;

Now Therefore, the condition of the above obligation and recognizance is that if the said Sivear Willard Lindstrom shall personally appear before the United States District Court for the Western District of Washington, Southern Division, in the City of Tacoma, Washington, from day to day and from term to term as may be ordered by the Court, and then and there obey the judgment of said Court and not depart from the jurisdiction of said Court without leave therefrom; and shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, or such city as shall [17] be designated by the said court for the hearing of said appeal, on such day or days as may be appointed therefor, and shall diligently prosecute the said appeal and abide by and obey all the orders of the said United States Circuit Court of Appeals in said cause and shall surrender himself in execution of the judgment or sentence appealed from, if said judgment and sentence be affirmed or the writ of error on appeal be dismissed; and if he shall appear for trial in the District Court for the Western District of Washington, Southern Division, on

such day or days as may be appointed for a retrial of said cause, and shall abide by and obey all orders made by said court and render himself in execution of the judgment of said Court, then the above obligation to be void; otherwise to be and remain in full force, virtue and effect.

[Signed] SIVEAR WILLARD
 LINDSTROM
 Principal.

State of Washington,
County of Pierce—ss.

On the 3rd day of January, 1944, before me personally appeared Sivear Willard Lindstrom, to be known to be the individual described in and who executed the within instrument and on oath stated that he signed the same freely and voluntarily for the uses and purposes therein stated.

Witness my hand and official seal, the day and year in this certificate first above written.

[Signed] STEPHEN J. O'BRIEN,
[Seal] Notary Public in and for the State of
 Washington, residing at Tacoma.

Approved as to form, January 3rd, 1945.

[Signed] HARRY SAGER
 Assistant U. S. District Atty.

Approved January 3, 1945.

 CHARLES H. LEAVY,
 District Judge

[Endorsed]: Filed January 3, 1945. [18]

[Title of District Court and Cause]

ASSIGNMENT OF ERRORS

Comes now Sivear Willard Lindstrom, appellant herein, and pursuant to the rules of this court and contemporaneously with the filing of the Bill of Exceptions herein, sets forth the following assignments of error asserted by the appellant and intended by him to be urged on the appeal of this action.

I.

The Court erred in refusing to permit appellant to testify that he laid all the facts and circumstances with relation to his legal duty to respond to an induction notice before his attorney, Ralph M. Rogers, and that he was advised by his said attorney that the matter was in the hands of the United States Attorney and that said attorney would advise the appellant when anything would come up with reference to it. The substance of the evidence rejected in connection with this was substantially as follows: Appellant offered to prove that when he received a notice of reclassification in 1-A, that he consulted with his attorney, Ralph M. Rogers, and that Ralph M. Rogers wrote a letter to a special agent of the Federal Bureau of Investigation, sending copies thereof to the local draft board of appellant and the State head of the selective service, which letter stated the facts with [19] reference to appellant's draft status. Appellant further offered to prove that he received a letter from L. V. Boardman, special agent in charge for the F. B. I.,

which advised his said attorney that an additional copy of this letter had been sent to the United States Attorney and that further action to be taken by the bureau would be ascertained from the United States Attorney. The Court denied this offer of proof in the following language: "I shall deny the offer of proof, except insofar as it deals with the letter from the special agent in charge, if the defendant himself says that he saw the letter, but the letter written by Mr. Rogers detailing the history of the case and the basis upon which deferment was asked would not be competent." To this ruling the appellant's attorney then inquired what the ruling of the court would be concerning the offer to prove the advice given to appellant by his attorney to the effect that the attorney would let him know when he heard from the United States Attorney. The Court rejected this offer but allowed the letter of the special agent of the F.B.I. to be received in evidence. The grounds urged for the admission of this evidence at the trial were that this evidence went to the question of whether or not appellant wilfully refused to report for induction as required by the notice of induction.

II.

The Court erred in admitting and receiving in evidence plaintiff's exhibit No. 18. The full substance of the evidence relating to the admission in evidence of said exhibit is as follows: Upon cross examination of appellant, the District Attorney exhibited to the appellant's exhibit 18, which pur-

ported to be a copy of a telegram dated [20] March, 1944, from appellant to the President of the United States, which telegram purported to set forth the financial condition of appellant and also stated that the person sending the telegram would not appear for pre-induction as he considered it a trick of the board. Appellant testified that he had sent a telegram to the President relating to this matter but denied that exhibit 18 was a correct copy of the telegram, and specifically denied that he had stated in the telegram that he would not report for pre-induction, or that he considered it a trick of the board. Appellant's counsel objected to the admission of this telegram in evidence upon the ground that it was not properly identified, which objection was sustained by the Court. Thereafter the Clerk of appellant's draft board took the witness stand and testified that the local draft board had received the telegram from state headquarters and that it was a part of the witnesses official files. Appellant again objected upon the ground that the exhibit was not properly identified and upon the further ground that it was not the best evidence. This objection was overruled by the Court and the exhibit was received in evidence.

S. J. O'BRIEN

Attorney for Appellant

Receipt acknowledged this 1st day of March, 1945.

HARRY SAGER

Assistant U. S. Attorney.

[Endorsed]: Filed March 1, 1945 [21]

[Title of District Court and Cause]

CLERK'S CERTIFICATE

I Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing Transcript of the Record on Appeal, consisting of pages numbered 1 to 20, inclusive, is a full, true and correct copy of so much of the record, papers and proceedings in Cause 15653, United States of America, Plaintiff, vs. Sivear Willard Lindstrom, Defendant, as required by Praecipe of Defendant-Appellant, on file and of record in my office at Tacoma, Washington, and the same constitutes the Transcript of the Record on Appeal from the Judgment of the United States District Court for the Western District of Washington, Southern Division, to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the original Bill of Exceptions herein, as certified by the Judge of the said District Court, consisting of pages numbered 1 to 38, inclusive, and the original Assignment of Errors herein, consisting of three pages, are transmitted herewith.

I do further certify that the following is a full, true and correct statement of all expenses, fees and charges incurred by me on behalf of the Defendant-Appellant herein in the preparation and certification of the said Transcript of the Record on Appeal to the United States Circuit Court [22] of Appeals for the Ninth Circuit, to-wit:

Appeal fee	\$5.00
Clerk's fee for preparing Transcript of Record on Appeal, 49 fol. at 15c and 8 fol. at 5c, and Clerk's certificate thereto..	4.15
	<hr/>
	\$9.15

and I do further certify that the said amount of \$9.15 has been paid in full to me by said Defendant-Appellant herein.

I do further certify that pursuant to Order of the District Court, the original exhibits admitted in the trial of this cause, numbered as follows, to-wit: Plaintiff's Exhibits, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18, and Defendant's Exhibits, Nos. A-3, A-4, A-5, A-6, A-7, A-8 and A-11, are transmitted herewith.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of Tacoma, in the Western District of Washington, this 6th day of March, 1945.

[Seal]

MILLARD P. THOMAS,

Clerk

By By E. E. REDMAYNE,
Deputy

In the District Court of the United States,
Western District of Washington,
Southern Division.

No. 15653

UNITED STATES OF AMERICA,
Respondent,
vs.

SIVEAR WILLARD LINDSTROM,
Appellant.

DEFENDANT'S BILL OF EXCEPTIONS

Be It Remembered, that on the trial of this cause in this Court at the July term of 1944, the Honorable Charles H. Leavy presiding, the plaintiff, appearing by the Honorable J. Charles Dennis, represented in Court by Harry Sager, Esquire the duly appointed and acting Assistant United States Attorney in and for said district, and the defendant appearing in person and by his attorneys, Messrs. S. J. O'Brien and Ralph M. Rogers, commencing on December 5th, 1944, to-wit:

A jury was empanelled and sworn, according to law, to try the cause.

Mr. Sager, of counsel for plaintiff, thereupon made his opening statement to the Jury, and the defendant, through his counsel, S. J. O'Brien, made his opening statement.

Thereupon the plaintiff, to sustain the issues upon its part, offered testimony of witnesses and documentary evidence as follows:

JEAN SCHONBORN,

produced as a witness by the plaintiff, being first duly sworn, testified on

Direct Examination

I live in Puyallup and am employed by the Selective Service System in Puyallup as Clerk, for Pierce County Board No. 1. I have been Clerk of the Board since August, 1943, and I was Assistant Clerk since April, 1942. I know the defendant, [1] Mr. Lindstrom, and I have the file of his case with me. Plaintiff's Identification No. 1, is the registration card for Sivear Willard Lindstrom and is part of the official file and is the original card.

(Whereupon, plaintiff's Identification No. 1 was admitted in evidence.)

(Plaintiff's Identification No. 2, the Selective Service Questionnaire for the defendant was admitted in evidence.)

After Mr. Lindstrom's questionnaire was filed he was classified in 1-A by the local board on March 7th, 1941, and he was notified of said classification.

Mr. O'Brien: I want to make an objection to all of this line of testimony with reference to these matters that have gone before, if Your Honor please.

The Court: Objection overruled, exception allowed. He then asked that his case be sent to the appeal board. Plaintiff's Exhibit 4, is a notice of **classification** notifying Sivear Willard Lindstrom that he was classified in 1-A and it was mailed to him.

(Testimony of Jean Schonborn.)

(Whereupon, plaintiff's Exhibit 4 was admitted in evidence and read to the jury.)

The members of the board are Stanley Staatz, Mr. Ben L. Andre and Frank A. Porter. Mr. Staatz lives in Sumner, Mr. Andre at Fife, and Mr. Porter in Puyallup. Mr. Porter is a real estate and insurance agent and Mr. Ben L. Andre a retired merchant, and Mr. Staatz a bulb grower. They have been the board during all the time of its existence. Mr. Lindstrom appeared before the board to talk to them about his business operations, about his refrigeration service. He thought he should be in a deferred class and the board did not change his [2] classification. He then appealed, on the 18th day of April, 1941, and his file was sent to the appeal board. Plaintiff's Exhibit 3 is a letter of transmittal showing the letters were sent to the appeal board. The Questionnaire indicates that Mr. Lindstrom was not married. The board learned at a later time that he was married, on the 27th of March, 1941.

Mr. Sager: Will the Court rule on our offer of Exhibit 3?

The Court: Do you object to that, Mr. O'Brien?

Mr. O'Brien: No.

The Court: It will be admitted in evidence. I understand the defendant's position, for the purpose of the record, is that he objects to all of these various documents except those that deal directly with the order to report as of the time set forth in the indictment.

(Testimony of Jean Schonborn.)

Mr. O'Brien: Yes, we object to all this line of testimony as immaterial, and don't comply with the indictment.

The Court: The objection will be noted and overruled, exception allowed.

Counsel will be advised that the Court takes the position that we might expedite this matter, that all of these documents in the file from the date of registration down until the present time, are material insofar as they may bear upon the issue of being wilful and knowingly refusing to report.

(Whereupon, letter referred to was then received in evidence, marked Plaintiff's Exhibit No. 3, and read to the Jury.)

The next step in his classification, the registrant was ordered up for induction on June 17th, 1941. After that he was given a postponement of induction by the board so that they might investigate his case further. He had been in to see the [3] board in the meantime and his induction was postponed for thirty days. At the end of thirty days, he was given an additional thirty day postponement. The date of the second postponement was July 14, 1941. He then was classified 1-H, which meant he was a man over 28 years of age at that time. A change in regulations for those who were over 28, would be [3a] classified 1-H. That had not been the policy prior to that time. On February 20, 1942, he was classified in Class 3-A and his notice was mailed. He was notified of these various classifications and

(Testimony of Jean Schonborn.)

changes in each instance by card, similar to this Exhibit 4. 3-A classification is a married man. On October 9th, 1942, he was classified 3-B. That classification was for a married man who was working in a defense industry. He told us that he was working at the Seattle-Tacoma Shipyards. Subsequently we got a request for a deferment from the Shipyards. Plaintiff's Exhibit 5 shows that the request was made out on the 25th of June, 1943. Exhibit 5 is an affidavit of occupational classification requesting deferment of Sivear Willard Lindstrom. This affidavit is from the Seattle-Tacoma Shipyards. He was classified 2-B on June 28, 1943. That classification is for any man that is employed in a defense industry.

Mr. Sager: We offer Exhibit 5, Your Honor.

The Court: It will be admitted in evidence, subject to the previous ruling.

(Whereupon, document referred to was then received in evidence, and marked Plaintiff's Exhibit No. 5.)

The classification just referred to was given to the defendant for six months, ending December 28th, 1943. Identification No. 6 is a supplemental affidavit in support of a renewal replacement schedule from the Seattle-Tacoma Shipyards. It is a request for a further deferment for the defendant. We received that on December 3rd, 1943. It asked for a deferment ending April 28th, 1943. The defendant was classified on December 30th, 1943, in Class 2-B,

(Testimony of Jean Schonborn.)
ending April 28th, 1944.

(Whereupon, plaintiff's Identification No. 6 was received in evidence and marked plaintiff's Exhibit No. 6.) [4]

Mr. Lindstrom was notified of these deferment classifications by mail. After each classification, in each instance, a card was mailed him similar to Exhibit 4.

Plaintiff's Identification No. 7 is a letter from the Seattle-Tacoma Shipbuilding Corporation, dated January 17th, 1944, addressed to the draft board. The letter has some reference to the case of Mr. Lindstrom and is part of the draft files.

(Whereupon, letter referred to was then received in evidence, marked plaintiff's Exhibit No. 7, and read to the jury.)

Mr. O'Brien: Pardon me, our objection goes to all of this, also. I think it is highly immaterial.

The Court: I understand and I have ruled, Mr. O'Brien, and you have your exception.

On January 22, 1944, the defendant was classified 1-A and notice was mailed. He was ordered up for pre-induction physical examination on January 27th. Plaintiff's Identification No. 8 is the order to report for pre-induction physical examination sent to the defendant, Order No. 357.

(Whereupon, order to report for pre-induction physical examination was then received in evidence, marked Plaintiff's Exhibit No. 8, and was read to the jury.)

(Testimony of Jean Schonborn.)

PLAINTIFF'S EXHIBIT No. 8

Selective Service System

Order to Report

Preinduction Physical Examination

January 31, 1944

[Local Board Stamp illegible.]

The President of the United States,

To Sivear Willard Lindstrom. Order No. 357.

Greeting:

You are hereby directed to report for preinduction physical examination at No. 17 Tribune Building, Puyallup, Washington, at 7:00 a. m., on the 10th of February, 1944.

FRANK A. PORTER

Member or clerk of Local
Board

[Local Board Stamp illegible.]

IMPORTANT NOTICE TO REGISTRANT

Registrant who believes he has a disqualifying defect.—If you believe that you have some defect which will disqualify you for service you may, on or before the 8th day of February, 1944, appear in person at the office of the Local Board, or, if you are unable by reason of such defect to personally appear, you may submit an affidavit from a reputable physician or an official statement by an authorized representative of a Federal or State agency to

(Testimony of Jean Schonborn.)

the effect that such physician has personal professional knowledge or such authorized representative has official knowledge of your defect, the character thereof, and that you are unable to personally appear due to the character of the defect. The Local Board may send you to the Local Board examining physician, and, if it does so, it shall be your duty to appear at the time and place designated by the Local Board and to submit to such examination as the examining physician shall direct. If the Local Board determines that your defect does disqualify you for service you will receive a Notice of Classification (Form 57) advising you that you have been placed in Class IV-F. Unless prior to the date fixed for your preinduction physical examination, you receive such a Notice of Classification (Form 57) advising you that you have been placed in Class IV-F, you must report for your preinduction physical examination as directed.

Every registrant.—When you report for preinduction physical examination you will be forwarded to an induction station where you will be given a complete physical examination to determine whether you are physically fit for service. If you sign a Request for Immediate Induction (Form 219), and you are found qualified for service, you will be inducted immediately following the completion of your preinduction physical examination. Otherwise, upon completion of your preinduction physical examination, you will be returned to this Local Board. You

(Testimony of Jean Schonborn.)

will be furnished transportation and meals and lodgings when necessary. Following your preinduction physical examination you will receive a certificate issued by the commanding officer of the induction station showing your physical fitness for service or lack thereof.

If you fail to report for preinduction physical examination as directed, you will be delinquent and will be immediately ordered to report for induction into the armed forces. You will also be subject to fine and imprisonment under the provisions of section 11 of the Selective Training and Service Act of 1940, as amended.

If you are so far from your own Local Board that reporting in compliance with this order will be a hardship and you desire to report to the Local Board in the area in which you are now located, take this order and go immediately to that Local Board and make written request for transfer for preinduction physical examination.

The defendant was required to report to the draft board office at No. 14 Tribune Bldg. for the physical examination and he failed to report. After they report the draftees are sent, by bus, to the induction station. A few days before the defendant was to report he came in to talk to the local board for a hearing and they had a meeting at that time. His classification was not changed. The defendant requested that [5] his case be sent to the appeal board.

(Testimony of Jean Schonborn.)

The date of his appearance before the local board was February 7th, 1944.

Plaintiff's Identification No. 9 is a letter from our local board, written to the defendant. The original was mailed to him.

(Whereupon, letter referred to was then received in evidence, marked Plaintiff's Exhibit No. 9, and was read to the jury.)

The defendant gave notice of appeal and we ordered him up for another pre-induction physical examination, plaintiff's Identification No. 10 is an order to report for pre-induction physical examination, mailed by our board on February 28th, 1944, to the defendant.

(Whereupon, letter referred to was then received in evidence and marked Plaintiff's Exhibit No. 10.)

PLAINTIFF'S EXHIBIT No. 10

Selective Service System

Order to Report

Preinduction Physical Examination

February 28, 1944

[Local Board Stamp illegible.]

The President of the United States,

To Sivear Willard Lindstrom. Order No 357.

Greeting:

You are hereby directed to report for preinduc-

(Testimony of Jean Schonborn.)

tion physical examination at No. 17 Tribune Building, Puyallup, Washington, at 7:10 a. m., on the 7th of March, 1944.

FRANK A. PORTER

Member or clerk of Local
Board

IMPORTANT NOTICE TO REGISTRANT

Registrant who believes he has a disqualifying defect.—If you believe that you have some defect which will disqualify you for service you may, on or before the 4th day of March, 1944, appear in person at the office of the Local Board, or, if you are unable by reason of such defect to personally appear, you may submit an affidavit from a reputable physician or an official statement by an authorized representative of a Federal or State agency to the effect that such physician has personal professional knowledge or such authorized representative has official knowledge of your defect, the character thereof, and that you are unable to personally appear due to the character of the defect. The Local Board may send you to the Local Board examining physician, and, if it does so, it shall be your duty to appear at the time and place designated by the Local Board and to submit to such examination as the examining physician shall direct. If the local Board determines that your defect does disqualify you for service you will receive a Notice of Classification (Form 57) advising you that you have been

(Testimony of Jean Schonborn.)

placed in Class IV-F. Unless prior to the date fixed for your preinduction physical examination, you receive such a Notice of Classification (Form 57) advising you that you have been placed in Class IV-F, you must report for your preinduction physical examination as directed.

Every registrant.—When you report for preinduction physical examination you will be forwarded to an induction station where you will be given a complete physical examination to determine whether you are physically fit for service. If you sign a Request for Immediate Induction (Form 219), and you are found qualified for service, you will be inducted immediately following the completion of your preinduction physical examination. Otherwise, upon completion of your preinduction physical examination, you will be returned to this Local Board. You will be furnished transportation and meals and lodgings when necessary. Following your preinduction physical examination you will receive a certificate issued by the commanding officer of the induction station showing your physical fitness for service or lack thereof.

If you fail to report for preinduction physical examination as directed, you will be delinquent and will be immediately ordered to report for induction into the armed forces. You will also be subject to fine and imprisonment under the provisions of section 11 of the Selective Training and Service Act of 1940, as amended.

(Testimony of Jean Schonborn.)

If you are so far from your own Local Board that reporting in compliance with this order will be a hardship, and you desire to report to the Local Board in the area in which you are now located, take this order and go immediately to that Local Board and make written request for transfer for preinduction physical examination.

He did not report for the physical examination.

Identification No. 11 is a letter written February 29th, 1944, to Pierce County Local Board No. 1, signed by S. Willard Lindstrom, which was the notice of appeal.

(Whereupon, letter referred to was then received in evidence, and marked Plaintiff's Exhibit No. 11.)

The defendant did not report for his second physical examination during the morning that he was to report. He called by telephone and said that he would be unable to report and I told him to report as soon as he could, but he did not report thereafter. When the notice of appeal was filed we forwarded the entire file to the appeal board. Plaintiff's Identification No. 12 is the individual appeal record filed by our local board concerning the defendant, which is sent to the appeal board. [6]

(Whereupon, document referred to was then received in evidence and marked Plaintiff's Exhibit No. 12.)

(Testimony of Jean Schonborn.)

Attached to Exhibit No. 12 is a letter from the Washington State Headquarters to the State Occupational Adviser in Seattle, regarding the defendant. This was attached to the record when it came back to us.

(Whereupon, Exhibit No. 12 was read to the jury.)

The lower half of the sheet is the action of the appeal board and it is filled in by the appeal board.

A 3-D classification is a dependency classification. The defendant was notified of the action of the appeal board by one of the cards. Then he was sent an order to report for induction. Plaintiff's Identification No. 13 is a copy of the order to report for induction, dated April 26th, 1944, mailed by our local board to the defendant.

(Whereupon, order to report for induction was received in evidence, marked Plaintiff's Exhibit No. 13, and read to the jury.)

(Testimony of Jean Schonborn.)

PLAINTIFF EXHIBIT No. 13

[Stamped]: Local Board No. 1 97. Pierce County
053. April 26, 1944 001. Tribune Bldg., Puyallup,
Washington.

April 26, 1944.

ORDER TO REPORT FOR INDUCTION

The President of the United States,

To Sivear Willard Lindstrom.

Order No. 357

Greeting:

Having submitted yourself to a local board composed of your neighbors for the purpose of determining your availability for training and service in the land or naval forces of the United States, you are hereby notified that you have now been selected for training and service therein.

You will, therefore, report to the local board named above at No. 17 Tribune Bldg., Puyallup, Wash., at 7:00 a. m., on the 13th day of May, 1944.

This local board will furnish transportation to an induction station. You will there be examined, and, if accepted for training and service, you will then be inducted into the land or naval forces.

Persons reporting to the induction station in some instances may be rejected for physical or other reasons. It is well to keep this in mind in arranging your affairs, to prevent any undue hardship if you are rejected at the induction station. If you are

(Testimony of Jean Schonborn.)

employed, you should advise your employer of this notice and of the possibility that you may not be accepted at the induction station. Your employer can then be prepared to replace you if you are accepted, or to continue your employment if you are rejected.

Willful failure to report promptly to this local board at the hour and on the day named in this notice is a violation of the Selective Training and Service Act of 1940, as amended, and subjects the violator to fine and imprisonment.

If you are so far removed from your own local board that reporting in compliance with this order will be a serious hardship and you desire to report to a local board in the area of which you are now located, go immediately to that local board and make written request for transfer of your delivery for induction, taking this order with you.

S. W. STAATZ

Member or clerk of the local
board.

The defendant did not report on the day required.

Plaintiff's Identification No. 14 is a delinquent registrant report, mailed May 16th, 1944, from the local board to Honorable J. Charles Dennis, United States Attorney. That is the next step after a registrant fails to report.

Mr. Sager: We offer it in evidence.

(Testimony of Jean Schonborn.)

The Court: It will be admitted in evidence under the same conditions that refers to the other documents.

(Whereupon, delinquent registrant report referred to was received in evidence and was marked Plaintiff's Exhibit No. 14.)

Plaintiff's Identification #15 is a report of physical examination dated February 18th, 1941, for the defendant and is part of the official records.

(Whereupon report of physical examination referred to was then received in evidence and marked Plaintiff's Exhibit No. 15.)

Plaintiff's Identification No. 16 is a report of physical examination dated June 5th, 1941, for the defendant and is likewise part of the official file.

(Whereupon, report of physical examination referred to was then received in evidence and marked Plaintiff's Exhibit No. 16.)

(Whereupon, Plaintiff's Identification No. 15 was read to the jury by Mr. Sager, followed by the reading of Plaintiff's Exhibit No. 16.)

Cross Examination

By Mr. O'Brien:

These records of the draft board that have been put in evidence, are not all of the records in the case.

(Whereupon, the Court gave permission to the defense to examine the file as to the records.)

(Testimony of Jean Schonborn.)

When Mr. Lindstrom appealed to the appeal board, all the records pertaining to his case were sent to the appeal board. The records did not include X-rays of his wife as to her physical condition. They did include the affidavits of the family physicians as to the condition of Mrs. Lindstrom—also relative to the condition of Mrs. Lindstrom's father. When Mr. Lindstrom was notified to appear for physical examination in January, he had a hearing with the local board. Nothing was said at that hearing about the physical examination. They sent him a letter afterwards extending the period for thirty days. When the defendant came to the draft board in [8] February of 1944, there was no direct action and his classification was not changed. If he was classified different he wouldn't have to report for physical examination and the board told him that they would let him know later and then the welfare made a check as to the family situation and after that was done he was then notified again to report for physical examination. On the day he was to report for pre-induction physical he called up the draft board office and talked to me and told me that he would not be able to report because of the condition of his wife and I told him to report as soon as possible. It is not the practice of the draft board to have people come in any day for physical examinations, but they could come in and request it. I did not tell him that we would renotify him when to appear, but if he had come in we would have sent him to Seattle

(Testimony of Jean Schonborn.)

for examination. After the phone conversation, that is, a few days later, the defendant's file was sent to the appeal board in Seattle. That was on March 14th, 1944.

Redirect Examination

By Mr. Sager:

Plaintiff's Identification 11 is the notice of appeal that the defendant gave on this occasion, dated February 29th, 1944. That was before his physical was ordered. We have never seen any X-rays of Mrs. Lindstrom. All papers and documents in connection with this file were sent to the appeal board.

(Witness Excused)

MRS. JEAN DeLONG

produced as a witness on behalf of the Government, and after being first duly sworn was examined as follows: [8a]

Direct Examination

By Mr. Sager:

My name is Mrs. DeLong. I am Assistant Clerk for the draft board, since December 1st, 1943. I know the defendant, Mr. Lindstrom. About noon on April 27th, 1944, the defendant came to the draft board office with his wife and baby and his sister-in-law and two children. He had his classification card, which is plaintiff's Exhibit 17, and he told me

(Testimony of Mrs. Jean DeLong.)

that he would not report for induction and he tore up his classification card and threw it over the desk, at me. Plaintiff's Identification 17 is the classification card that we sent to him advising him of the decision of the appeal board, which was three to nothing, and we mailed it and that is the card he tore up. After he tore it up he threw it at the desk and at me and I picked it up and pasted it back together. At that time he said he would not report; that he did not consider that he was classified right; that he should have a different classification and that he would not abide by the rules until such classification was forthcoming. He said he wanted to take it to Court and at that time he would have all of his dependents, his lawyer, his doctor, the X-rays and anything pertaining to the case. He said there was a Court whereby he could get justice.

Cross Examination

By Mr. O'Brien:

His attitude was that he was not classified right, and that he just wasn't going to report.

(Whereupon, order to report for induction referred to was then received in evidence and marked Plaintiff's Exhibit No. 17.)

(Witness Excused) [9]

The Government Rests

MRS. S. W. LINDSTROM,

produced as a witness on behalf of the Defendant, after being first duly sworn was examined and testified as follows:

Direct Examination

By Mr. O'Brien:

My name is Mrs. S. W. Lindstrom. I am the wife of the defendant. We were married on the 27th day of March, 1941, in Tacoma. We have one child. She was born December 11th, 1943. My dad lives with me. He is crippled. He was in an accident where he worked and had his leg amputated. When my husband was notified to report for induction in May of 1944 I called Commander Chastek in Seattle twice. Commander Chastek is a member of the appeal board in Seattle. I called him from my neighbor's across the alley, Mrs. Gaidos. Her telephone number is Broadway 4409. I talked to Commander Chastek on the telephone on account of my dependency,—my dad's condition and mine. On May 1st I talked to him 18 minutes. He told me to go see the local board. I told him about my X-rays; that I couldn't take them at that time; that I was sick and I couldn't take the medicine. He said to go to the local board and re-appeal the case. I asked him whether we could re-appeal and he said. "Yes, you can certainly go there, take your X-rays and tell them to re-appeal the case," and they wouldn't do it. Then I called him again on May 10th. That afternoon when my husband went to work and I was sitting down with my dad listening to the radio

(Testimony of Mrs. S. W. Lindstrom.)

and someone over the radio made a statement that men over 26 did not have to report, I called Commander Chastek to see what he would advise me to do and Commander Chastek told me that he was going to [10] Camp Murray the next morning and he was going to the Shipyards and get my husband a deferment, which he did.

Mr. Sager: I object to that statement, Your Honor, what he did.

The Court: Yes, I will have to sustain the objection to the last phrase in her answer "which he did".

When my husband came home that evening I told him what had happened. Later I read in the Tacoma News Tribune, a newspaper, a statement relative to the drafting of men over twenty-nine. My husband will be thirty-three in March. That was the newspaper printed on May 12th, 1944. I also heard the same statement made over the radio prior to that time.

(Whereupon, the newspaper was offered in evidence and admission refused after the objection of the Government.)

Cross Examination

By Mr. Sager:

I called Commander Chastek on two occasions, May 1st and May 10th. On the first occasion I talked to him 18 minutes. I got the record from the telephone company. My husband did not ask me to call him. I called him myself because of my home

(Testimony of Mrs. S. W. Lindstrom.)

circumstances. My dad is a cripple. My husband did not ask me to call him on the second occasion. I just heard it over the radio. He wasn't there at the time I called Commander Chastek. He went to work about ten minutes to 3:00 and I called about fifteen after 3:00. When he got home he asked me if I found out and I said "Yes", and he said, "What did he say, do I or don't I?" And I said, "You don't, he is going to the Shipyards and get you a deferment" and we let it go. I don't recall talking to Major Armsted. The only [11] times I called I talked to Commander Chastek. My sister and I saw Major Armsted on one occasion in Seattle. I believe that was in March or April of this year. Commander Chastek never told me that the only place my husband could get a deferment would be from the draft board. He never told me that I should go to the draft board and straighten the matter out with them. He just told me he was going to the Shipyards and fix it all up and he said, "Don't worry a bit." That was on May 10th, 1944. On May 1st, when I called, he told me to go to the draft board and re-appeal my case. He didn't tell me to straighten it out with them. He told me to re-appeal my case. He didn't tell me the draft board was the only authority to fix classifications and he didn't tell me that he didn't have authorization to fix a deferment. All he said was he was going to the Shipyards and get the deferment for my husband and I didn't bother him any more and

(Testimony of Mrs. S. W. Lindstrom.)

we didn't hear from him or anything. I went to see Major Armsted about this classification too. He didn't tell me to go see the draft board. He said, "You must have evidently chewed the fat wrong", because, he said, "They should classify him differently", but we couldn't talk to the draft board. They wouldn't listen. We have been to the draft board about a dozen times since 1941 and we met with the board on a number of occasions and gone over this whole thing time and time again.

Redirect Examination

By Mr. O'Brien:

Mr. O'Brien asked me to go to the telephone company and receive a copy of the bill for the telephone call. This is the copy that I received from the telephone company.

(Whereupon, bill referred to was received in evidence and marked Defendant's Exhibit No. A-2) [12]

Recross Examination

By Mr. Sager:

My baby was born December 11th, 1943.

(Witness Excused)

SIVEAR WILLARD LINDSTROM,

the Defendant, after being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. O'Brien:

My name is Sivear Willard Lindstrom. I was born March 14th, 1912. I am thirty-two years old. I have had eight grades of grade school and about one-half year high school and I am a graduate of a correspondence course in Engineering. I used to be an automobile mechanic. I also took that up in school. I worked at that for some time. Then, I changed to refrigeration and home appliances. I am now a welder at the Shipyards. I have been there almost three years. In the time that I worked at the Shipyards I missed about two weeks work, when I had the flu, and other occasions when I was sick and I missed work in the neighborhood of two months when my wife was sick. I have never been arrested or convicted of a crime.

I received a notice of induction from the draft board about the first of May, 1944, stating that I was to report on the 13th of May, 1944. My wife called up the appeal board about that on the first of May. She told them she was unable to have X-rays taken of her gall bladder and they told us to re-appeal the case and put in our X-rays and the local board would appeal it to the appeal board and we did that. Then my wife called the appeal board the second time and she talked to Commander Chastek. She told me that he was going to get out a defer-

(Testimony of Sivear Willard Lindstrom.)

ment. He said, "We don't like to issue a 3-D classification, so we will put your husband on a deferment list and you will be [13] happy and I will be happy", and Commander Chastek says, "Tell your husband he don't have to report", "I will have that all straightened out." Thereafter I was called into the draft office at the shipyards. I went to the deferment department. They had me fill out a deferment on a piece of paper like I filled out before and I did not hear any more from it. The next time I received any communication in reference to my draft status was when I got a letter through the mail from the F.B.I., wondering where I lived. As near as I can remember, I wrote on the back of the same paper and sent my address back to them. I don't recall when that was. Later, I received a letter from the F.B.I. and after receiving this letter I went to the United States Attorney and talked to him. He told me to go and see the draft board, which I did. After quite a conversation with them they told me that they didn't care about my wife, as far as they were concerned I was in the Army.

(Whereupon, letter referred to was received in evidence and marked Defendant's Exhibit A-4.)

(Testimony of Sivear Willard Lindstrom.)

DEFENDANT'S EXHIBIT A-4

Federal Bureau of Investigation
United States Department of Justice

25-8641

407 U. S. Court House
Seattle 4, Washington
July 29, 1944

Mr. Sivear Willard Lindstrom
2801 Portland Avenue
Tacoma, Washington

Dear Sir:

The United States Attorney has informed this office that you have been reported delinquent by Selective Service Board #1, Puyallup, Washington.

You are instructed to immediately communicate with this local board and to comply with any orders received without further delay. The enclosed self-addressed envelope may be used to advise me you have contacted your Local Board.

This Matter Demands Prompt Attention, Inasmuch As Failure To Obey Instructions Of Your Local Board May Subject You To Prosecution In The United States District Court.

Very truly yours,

L. V. BOARDMAN

Leland V. Boardman

Special agent in charge

Enclosure

(Testimony of Sivear Willard Lindstrom.)

That was sometime in August of 1944. Then I went to see Mr. Rogers. He said he would try and straighten it out.

Mr. Sager: I object.

The Court: No, I will have to sustain the objection. I do not see how the fact that he went to see counsel—assume now that if counsel told him he didn't have to obey the rules and regulations in the Act, and I couldn't hardly assume that, but under the circumstances, whatever he told, whether he told him to obey it or disobey, still it would not exonerate him from failure to comply with an order, and would not bear upon the issue of good faith to the degree—and would be self-serving if he went to see his own counsel. I will have to sustain the [14] objection, Mr. O'Brien.

Mr. O'Brien: Well, we want to make an offer of proof; Your Honor please.

The Court: Well, when we have the intermission you can make the offer of proof.

I do not have any objection to going into the Army. I am willing to go when my turn comes.

The only reason I went to the draft board on these various occasions was because of the fact that I felt I was improperly classified and I wanted them to recognize my family conditions. I was not under the impression that I was to report on May 13th because of the messages that were given to me by my wife and also by the statement in the newspaper. I have been in the Shipyards ever since the 13th of May, 1944.

(Testimony of Sivear Willard Lindstrom.)

Q. Did you receive a deferment from the Shipyards?

Mr. Sager: I object to that; the shipyards do not grant any deferments.

Mr. O'Brien: Well, from the draft office.

Mr. Sager: There isn't any draft board at the Shipyards.

The Court: I will have to sustain your objection unless you want to direct it to the draft board, and you have.

Q. Well, were you under the impression then, that this office you went to in the office in the shipyards could grant you a deferment?

A. Yes. It was my belief that Commander Chastek was above the draft board at Puyallup or he wouldn't be on that appeal board. If I had known that the draft board in Puyallup was the one that I had to obey, I would have reported for induction. I am willing to go to the Army any time they want me. The only objection I had was the fact that I was improperly [15] classified and I did not believe I was to report on account of these communications.

Cross Examination

By Mr. Sager:

I was willing to go into the army whenever my turn came, but my turn did not come in January of 1941. I may have been classified 1-A in the early part of 1941, I am not sure. I don't know whether I was classified 1-A in March, 1941. It seems to me

(Testimony of Sivear Willard Lindstrom.)

I was married before I ever received my classification. I did not call up the draft board to tell them I was married before I had been married. I always told them the truth. I was married on March 27th, 1941. I received a copy of plaintiff's Exhibit No. 4, which put me in Class 1-A, but I don't know about the date. It is dated March 7th, 1941 and I was married on March 27th. I appealed my 1-A classification after we had a hearing with the board.

Mr. O'Brien: I still object, if Your Honor please, to this line of testimony on cross-examination.

The Court: Objection will be overruled, exception allowed.

Mr. Rogers: If the Court please, I would just like to say that this man is not being tried here for trying to have his classification changed back in 1941. He is charged very specifically under this indictment from May 13th of this year. Now, it may be true that a certain amount of the background of showing the history of his classification might be necessary, but what is happening here, if the Court please, is counsel is trying to bring out a lot of evidence to throw some light into the man's prejudice for his probably having tried to have his classification changed three years ago, which I think any man had a right to do if he was justified. The law provides for it. [16]

The Court: The question goes very properly to the issue of good faith in the matter of knowing that he was not complying with an order. That is the only defense that is raised here. There is no issue

(Testimony of Sivear Willard Lindstrom.)

raised here that there wasn't an order made; that there wasn't a classification made. Now, then, if he had been registered and dealt with his draft board for three or four years, it would be a question very material as to whether or not he innocently failed to comply with an order, or whether he had knowledge of the situation over a long period of time. That is an issue that the jury must pass upon, not the question as to whether the board properly classified him or not, and he has taken the stand and proposed a defense he believed he did not have to report. That is what makes this all competent.

Mr. O'Brien: If your Honor goes into the matter about the appeal, we ought to be able to show why he did not——

The Court: No, it is not a question as to why he appealed or why the board put him where they did, but the fact is that they did put him there and he was ordered to report on a given day, and that he says now he did not report, but he thought he didn't have to.

Mr. O'Brien: We do not deny but what he was classified 1-A and did not report when he should report.

The Court: That becomes a complete offense, and there is no appeal from his classification as made by the draft officials to the Court, excepting habeas corpus proceeding, not in a case of this kind, but the defense can always be interposed that he did not know, and that is the defense that I understand you have interposed here.

(Testimony of Sivear Willard Lindstrom.)

Mr. Rogers: I understand that, but I still cannot see [17] where it makes any difference, as far as that is concerned, whether he was classified A-1 before his marriage or after his marriage. I don't see how that has a bit of relation, whether he is in good faith now. It is simply a matter of record.

The Court: It goes to the question as to whether he regarded or disregarded the orders of the draft board under whose jurisdiction he was for a period of three and a half years.

The Court has ruled, and I will allow you an exception, and of course I admonish counsel for the Government we are going to spend a great deal of time on all of those various steps.

Mr. Sager: I do not intend to go through all of that, Your Honor. My examination here was directed to the statement that he was perfectly willing to go in when his order came up. His order came up back in January, 1941.

The Court: Now, let's proceed.

I received a letter from the F.B.I., which is Defendant's Exhibit A-4, on July 29th, 1944, I believe I received it two or three days later. I have read the letter.

Q. It says the United States Attorney has informed this office that you have been reported delinquent by Selective Service Board No. 1 in Puyallup, Washington. You are instructed to immediately communicate with this local board and to comply with any orders received without further delay. Enclosed self-addressed envelope may be used to

(Testimony of Sivear Willard Lindstrom.)

advise us you have contacted your local board. This matter demands prompt attention inasmuch as failure to obey instructions of your local board may subject you to prosecution in the United States District Court.

Did you read that, did you? [18]

A. Yes.

Q. Did you think, after reading that, you were still entitled to disobey the order to report for induction?

A. I acted on that order, but of course my induction period had expired then.

Q. You were required to report on May 13th?
[18]

A. Yes.

Q. And of course you did not?

A. I was told not to, so of course I didn't. My wife told me not to.

After I got the letter from the F.B.I. I went to see you here in this building and my wife was with me and I had this letter with me. You told me that I would have to straighten this out with the draft board and comply with their orders and that is what I tried to do. You also told me that if they ordered me to report that I would have to report, but they did not order me to report. The order to report that I had, the time had already gone by. As far as I know I was on a deferment. You told me that regardless of what I thought my classification ought to be, I should have complied with that order. I thought that Commander Chastek was higher than

(Testimony of Sivear Willard Lindstrom.)

you. I didn't talk with Commander Chastek—my wife did, and it was after she talked to Commander Chastek that we came in to see you and you told me that I would either have to get this thing straightened out with the local board or there would be a prosecution. I saw the local board and then I handed that letter to Mr. Rogers. I had a long meeting with the board in July of this year and they told me that I had not reported for induction pursuant to their order. My wife was not with me at this meeting. I was up there alone. They locked the doors so that none of my dependents could come in. I had a long talk with the draft board. I was not demanding a re-classification, I told them I would go when my turn came. I told them I expected consideration in the case. I told them if my case warranted a re-classification I expected it. I didn't tell them that until I was re-classified I would not report for [19] induction. I did not offer to report at that time and they didn't tell me to report. I told them that I was on deferment at that time. I saw the deferment in their papers. I did not get any re-classification or any further deferment after I was ordered to report for induction, but I applied for a deferment to the Shipyards. I don't know whether or not it was ever allowed by the board. I never got any notice as to whether it was or was not, but Commander Chastek said I should have one. I was ordered to report for physical examination on March 7th, 1944. That is the time I called up the draft board and said I couldn't appear on that day

(Testimony of Sivear Willard Lindstrom.)

because of my wife's condition. I sent a telegram to the President in connection with this matter.

Q. I will show you Plaintiff's Exhibit 18 and ask you if that is the telegram you sent to the President?

A. I suppose. That is not the way I worded it. The Court: Speak up a little louder.

A. That is something like it, I can't remember putting in this statement.

Q. Well, you do recall sending a wire or telegram to the President on March 7th, 1944?

A. I recall sending a telegram.

Mr. Sager: We offer that in evidence.

Mr. O'Brien: We object, it is not properly identified, if Your Honor please.

The Court: Objection will be sustained, as not properly identified, Mr. Sager.

Mr. Sager: I think it is properly identified. It shows on its own face, Your Honor——

The Court: It is a copy. You submitted it to the witness [20] and asked if that was his telegram. He said yes, but there is substance in that telegram he has no recollection of having written or sent, so your——

Mr. Sager: That is the original telegram, that is not a copy. This is the telegram that went to the White House. It has the White House stamp on it.

Mr. O'Brien: That is not the one he sent, he said.

The Court: Your identification does not even meet the elementary rules of evidence. The fact

(Testimony of Sivear Willard Lindstrom.)

there is a typewritten signature on a typewritten telegram, you have to have some identification on it.

Mr. Sager: He says he sent a telegram on this date.

The Court: If you desire to further identify it, if you have some one here that received the telegram or accepted the money from him and can verify it as the telegram he sent, or an explanation of the part of the telegram he challenged—I don't know what it is, but anyway, he questioned a portion of it.

Q. Do you recall sending a telegram to the President on that date, don't you, Mr. Lindstrom?

A. I recall sending a telegram, but not on that date.

Q. Wasn't that the same date that you were to report for this physical examination?

A. I don't know. I never tried to keep tract of it.

Q. Well, didn't you testify to that fact just a little while ago? A. What?

Q. Didn't you say that was a fact a little while ago, that you sent this telegram on that date? [21]

A. I said that I knew of sending a telegram, and I didn't know the date, and I wasn't sure of the wording of it.

Q. From what office did you send the telegram to the President?

A. I believe this here was from the Tacoma office.

(Testimony of Sivear Willard Lindstrom.)

Q. The Western Union here in Tacoma?

A. Yes.

I never talked to Commander Chastek, but I know that he is on the appeal board in Seattle and I am not mistaken about that. I don't recall talking to Major Armsted. I talked to somebody at the board, but I don't know the name I am sure.

The Court: Now, you may go ahead and make your offer. Mr. Sager, you had better pay attention to this.

Mr. O'Brien: We offer to prove that the defendant, Sivear Willard Lindstrom, in response to the letter which has been introduced as Defendant's Exhibit A-4, went to see his attorney Ralph M. Rogers; that Ralph M. Rogers, acting as his attorney, wrote a letter on August 3rd, 1944, to Mr. Leland V. Boardman, Special Agent in charge, Federal Bureau of Investigation, United States Department of Justice, and sent copies of the letter to the local board Number 1, Puyallup, Washington, and to DeLong, the State head of the Selective Service, Commander Chastek, Major Armsted, answering this letter which is Defendant's Exhibit A-4, stating the facts in reference to Mr. Lindstrom's draft status, that he received a letter from L. V. Boardman, Special Agent in charge, dated August 11th, 1944, in reply thereto, in which he said:

"This office has made an additional copy of your letter available to the United States Attorney at Tacoma. The local board, of course, must de-

(Testimony of Sivear Willard Lindstrom.)

termine the proper classification of [22] the registrant. This board, however, has been requested to fully notify the United States Attorney at Tacoma regarding the circumstances considered in reaching the 1-A classification in this case. Further action to be taken by this bureau will thereafter be ascertained from the United States Attorney." Signed by Mr. Boardman.

Mr. Rogers informed Mr. Lindstrom that the matter was in the hands of the United States Attorney; that he would let him know when something comes up with reference to it. That is where the matter stood at the time of his arrest.

We claim——

The Court: Well, that might remotely bear on this issue of knowingly refusing to report, but you have the situation that subsequent to the time that these various officials of the United States Government—some of them, perhaps, who might even have assumed authority they did not have, were giving advice and so forth; that the grand jury had not indicted, and up until the date of indictment—this in the absence of the jury, and I say it very frankly to you, it would have been the duty of this defendant, if he was laboring under a misapprehension on the 14th of July because of what his wife told him, and Commander Chastek told him, or even what the United States Attorney told him, he still had, up to the date of the return of the indictment, to go and offer himself in compliance

(Testimony of Sivear Willard Lindstrom.)

with the order, and there is no showing that he ever did that.

Mr. O'Brien: That will be taken up later on in one of these reports here. The local draft board, on July—which will go in, he says—this is their own records, he says, “I am not refusing to go in the army.”

Mr. Sager: Read the rest of it. [23]

The Court: The fact is, he is not in the army and the fact that he is ordered in and even to this late date, even upon an arraignment in this court—

Mr. O'Brien: You are not dealing with people of high intelligence. This situation is that this fellow is so darned confused he doesn't know where he is.

The Court: There are many, many people,—thousands of them in the army who, perhaps, have less education and less intellect than this man, and it is a question of fact for the jury and not for the Court as to whether he knowingly declined upon that day or any day subsequent and up to——

Mr. O'Brien (Interrupting): This is afterwards, and we are attempting to show that afterwards he went to his lawyer and he told him he would let him know. This letter certainly calls for a hearing with somebody with reference to this matter.

The Court: These letters of communication indicate to me that officials perhaps in a desire to be courteous, have done a lot of things that they just as well might not have done. The question for me

(Testimony of Sivear Willard Lindstrom.)

to consider is whether or not he could have been misled, and if there is any showing at all that he could have been misled, I am sure Mr. Rogers would not have ever intentionally advised him to violate the law, but Mr. Rogers may not be too well posted on the draft law and regulations.

Mr. Rogers: The question before the Court is whether or not this evidence should go to the jury. The jury is the one that has to determine the facts in this case, and it seems to me that while it may be true that officers, high officials, in an effort to be courteous are doing things they should not, but certainly if they do those things and they led the less wise to do acts—— [24]

The Court: I will examine the letters during the intermission, if you will pass them up.

Mr. Rogers: It simply goes to the question of good faith or bad faith.

The Court: The situation would not change the major consideration here, assuming that the jury should find as a fact, it was through ignorance and no intention to violate the law at all that he failed to report any time up to the time of his indictment, and therefore acquit him, he is immediately confronted with the proposition of complying with the draft board order.

Mr. O'Brien: He has already been so advised by me. We know that, but he has got to get out of this first.

The Court: I don't know, but from what the United States Attorney says, there is no intention

(Testimony of Sivear Willard Lindstrom.)

that he has ever submitted to the United States Attorney, even since the indictment, that he——

Mr. O'Brien (Interrupting): We realize he has got to go right back into the arms of the draft board. We certainly have to dispose of this first, there is no question about that in my mind.

The Court: I shall examine these documents in the intermission.

(Recess.)

(Whereupon, jury resume their seats.)

The Court: Now, in the matter of the letters that have been submitted for the Court's ruling and on the offer of proof made in the absence of the jury, I shall deny the offer of proof, except insofar as it deals with the letter from the Special Agent in charge, if the defendant himself says that he [25] saw the letter. But, the letter written by Mr. Rogers detailing the history of the case and the basis upon which deferment was asked, would not be competent.

Mr. O'Brien: What about the advice that he was given by Mr. Rogers with reference to the letter?

The Court: I do not know that your offer of proof went to it.

Mr. O'Brien: He advised him he would let him know when he heard from the United States Attorney.

The Court: Mr. Rogers' status as an attorney is that of a representative of the defendant. That could never become an excuse for violation of the

(Testimony of Sivear Willard Lindstrom.)

law, but that letter, if you can make a showing that it was brought to the attention of the defendant, the defendant is still on the stand, is he not, or did you finish? Have you finished your cross-examination?

Mr. Sager: No, I had not quite finished, Your Honor.

Cross Examination—(Resumed)

By Mr. Sager:

In May I went to Seattle and talked to somebody at the appeal board. I wouldn't say it was Major Armsted. I am not sure. I don't recall whether I was told that I would have to get this matter straightened out with the local board; that they were the only ones that could give me a deferment. The man talking to me was somewhat evasive as to what I was to do. I don't remember him telling me that the local board was the only one that could give me a deferment. I went up to the appeal board to see somebody with regard to this matter because I realized the appeal board was above the local board. I might have talked to Major Armsted. I don't believe I was [26] discussing this matter with him after I had been ordered to report and had failed to do so. I believe I was there before I was to appear for induction. I didn't discuss anything with any of them after May 13th, except the local board and you. I remember going to Seattle and talking about a classification. I wanted to re-appeal. I don't remember for sure if it was Major Armsted. It was somebody up there. I believe it might have been him. I don't remember any particular thing

(Testimony of Sivear Willard Lindstrom.)

I said in the telegram to the President. I know I told the president that my wife was sick and all that. I do not remember telling him that I didn't report for pre-physical induction because that would be a lie. I would gladly report as I told you if my turn came. I didn't say in the telegram that I was not going to report on my pre-induction physical, or that I considered it a trick of the board.

Redirect Examination

By Mr. O'Brien:

After I received the letter from the F.B.I., which was dated the 29th of July, 1944, I went to see Mr. Rogers and he wrote a letter for me and he received a letter in reply from the F.B.I.

(Whereupon, letter referred to was then received in evidence, was read to the jury and marked Defendant's Exhibit A-5.)

DEFENDANT'S EXHIBIT A-5

Federal Bureau of Investigation
United States Department of Justice
407 United States Court House
Seattle 4, Washington
August 11, 1944

Mr. Ralph M. Rogers, Attorney
1205 Rust Building
Tacoma, Washington

Re: Sivear Willard Lindstrom

Dear Sir:

I have your letter dated August 3, 1944, concern-

(Testimony of Sivear Willard Lindstrom.)
ing Sivear Willard Lindstrom, registrant of Pierce County Local Selective Service Board No. 1, Puyallup, Washington, and I wish to thank you for the comprehensive statement made therein of the circumstances which you believe may justify a deferment by the Local Selective Service Board.

It is noted that a copy of your letter was directed to the Local Board at Puyallup, as well as to the State Director and to Commander C. Chastek. This office has made an additional copy of your letter available to the U. S. Attorney at Tacoma. The Local Board, of course, must determine the proper classification of the registrant. This Board, however, has been requested to fully notify the U. S. Attorney at Tacoma regarding the circumstances considered in reaching the 1-A classification in this case. Further action to be taken by this Bureau will thereafter be ascertained from the U. S. Attorney.

Very truly yours,

L. V. BOARDMAN

Leland V. Boardman

Special Agent in Charge

Defendant's Exhibit A-5 is the answer Mr. Rogers received from the F.B.I.

After I received the letter of July 29th, from the F.B.I., I took the letter over to Mr. Rogers and he said he would write a few letters and probably

(Testimony of Sivear Willard Lindstrom.)

straighten it out. Later on I dropped down and saw this letter that he had received. I had no more contact with anyone in connection with this case until [27] the time I was arrested on this charge. After that time I went to the local board on July 31st, 1944. They said they would recognize the deferment if I would see Commander Chastek and he would recognize it. I asked them if they had my deferment there and they finally said, "Well, it is here," and they showed me the deferment.

Recross Examination

By Mr. Sager:

On July 31st, when I went out to the draft board, they did not tell me that they had classified me properly; that the appeal board had affirmed the classification, or that I had failed to report for induction, and that they were not going to do anything further about it. They said, "We don't care about you, and we don't care about your wife, so as far as we are concerned, you are in the army." They did not tell me that I was delinquent, and that they were not going to change my classification. They said they had the deferment there, but they did not want to recognize it because they didn't like it. They said they received the notice of deferment, but they did not want to recognize it. It may have been a request, or a deferment, I don't know which, but they told me they would not allow it.

(Testimony of Sivear Willard Lindstrom.)

Redirect Examination

By Mr. O'Brien:

They did not tell me to report for induction on any specific day when I was there. They told me to see Commander Chastek or some higher authority, but they said if Commander Chastek recognized the deferment they would. That is what they told me to do on July 31st.

(Witness excused.) [28]

EARL D. MANN,

produced as a witness on behalf of the defendant, after being first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Rogers:

My name is Earl D. Mann. I am Deputy Prosecuting Attorney of Pierce County. In June of 1944 I was Assistant Deferment Supervisor at Todd Pacific Shipyards and the records were made under my supervision. I don't know Mr. Lindstrom personally. I know who he is.

In January of 1944, Mr. Lindstrom had a deferment which ran to the 28th of April, 1944. In January of 1944, it became necessary to get extension deferments for welders, and in order to do that we worked out an agreement with the State Selective Service headquarters that if on the defer-

(Testimony of Earl D. Mann.)

ments that would run for a longer period, if we would agree to advance the expiration of these longer term deferments, they would extend the terms of these welders for which we were asking an extension, and we agreed to that and went through our records selecting all men whose deferments expired in February, March and April of that year for advancement of their deferments, and among those was Mr. Lindstrom, whose deferment was then advanced to expire immediately. That notification to the Selective Service Board was as of January 17th. Then, right after that we got notice of the cancellation of his deferment. Next we have the notice of January 28th cancelling Mr. Lindstrom's deferment and placing him in 1-A in accordance with our agreement. On March 8th we received a request from the Selective Service Board in Puyallup for Mr. Lindstrom's work record. We answered that by giving them a statement of his absences. On June 5th, in conformity with a revision of the Selective Service regulations, [29] we were permitted to again place men over thirty on our replacement schedules, and again asked for a deferment, even though they had previously been scheduled for release. On June 5th, we placed the name of Mr. Lindstrom on our replacement schedule, authorizing us to ask for his deferment **again**, and we submitted a request for his deferment at that time. We asked Mr. Lindstrom, on June 3rd, to come to our office. I have a record showing that we requested him to do this. We sent these re-

(Testimony of Earl D. Mann.)

quests for deferment to the Selective Service Board where the registrant is registered. We submit our replacement schedule listing to Commander Chastek, Occupational Advisor, for approval before submitting the deferments to the draft board. In this particular case the request for deferment was sent to the board on June 5th, which was the date the man's name was placed on the schedule. However, the sheet was not complete at that time, and was not sent in for approval by the State office until June 13th. At that time we requested a deferment for more than six months, which means more than six months from April 28th, 1944. On June 13th the replacement list was sent to Commander Chastek and was returned to us on July 4th, 1944, with their approval. Mr. Lindstrom's name is on that list.

Defendant's Exhibit A-6 is page 192 of the supplement of our second renewal replacement schedule that was effective April 28th, 1944. That is one of the four sheets that were sent for approval and this list contains the name of the defendant.

(Whereupon, list referred to was then received in evidence and marked Defendant's Exhibit No. A-6.)

Defendant's Exhibit A-7 is a letter from Commander Chester [30] J. Chastek on July 4th, 1944, approving the replacement schedule of which sheet 192 is included, which is defendant's Exhibit A-6.

(Whereupon, letter 192 referred to was then received in evidence and marked Defendant's Exhibit A-7.)

(Testimony of Earl D. Mann.)

We have not received any communications since this letter relative to Mr. Lindstrom, from either the State Selective Service Department or his local draft board.

There was another request for a deferment made on the 28th of September, 1944. The six months' period would have expired on October 28th, 1944.

Q. I see, as far as your records show, Mr. Mann, this Mr. Lindstrom would still be on deferment there in the same category as the other men on deferment? A. Now, how is that?

Q. As far as your records show there, he is in the same position now as other men on that list?

A. Not quite, no. The last communication from the board regarding deferment was his 1-A classification in January.

Mr. Rogers: I see, that is all——

Q. Well, he is still on deferment as far as your records show, though?

A. We are authorized to request this deferment.

Q. I see.

A. Which we did.

Cross Examination

By Mr. Sager:

The only one that has any authority to grant a deferment is the draft board. The draft board notifies us of the deferment by sending us a card indicating the classification, [31] designating that deferment, and if it is for a limited period, the card shows when the deferment expires. The fact that

(Testimony of Earl D. Mann.)

we request a deferment does not mean that he is deferred or entitled to deferment. The fact that Commander Chastek approved the replacement list does not indicate the defendant is entitled to a deferment. That is just Commander Chastek's approval insofar as the War Manpower Department is concerned. I don't believe Mr. Lindstrom came into the office to inquire about his deferment in this case. We usually make a note on the record if the man does inquire as to his deferment.

Q. The fact is, he was not given a deferment?

A. As far as I know he was not.

Q. It is not shown on the record he was?

A. No.

Q. Your record shows his last classification was 1-A, and you received notice of that some time in January, shortly after this release that you sent to the board?

A. Yes.

JEAN SCHONBORN,

recalled for further cross examination, was examined and testified as follows: [31a]

Cross Examination

By Mr. O'Brien:

We usually have an assistant clerk who makes the records of the hearings before the local draft board. They are typewritten. Defendant's Exhibit A-8 is a record of the hearing of Sivear Willard Lindstrom, dated July 31st, 1944. Exhibit

(Testimony of Jean Schonborn.)

A-9 is a letter from Leland V. Boardman, Special Agent in charge of the Federal Bureau of Investigation, written to Pierce County Local Board No. 1, dated August 11th, 1944. This letter is in reference to Mr. Lindstrom. Defendant's Exhibit A-10 is a letter from Commander Chester J. Chastek, State Occupational Advisor, dated August 15th, 1944, regarding the defendant.

(Whereupon, Exhibit A-8 was received in evidence.)

Defendant's Exhibit A-11 is an occupational certification from Earl D. Mann of the Todd Pacific Shipyards, Inc. We received it October 2nd, 1944, regarding the defendant. It is a request for a deferment; the occupational certification showing that he is employed by the Shipyards.

(Whereupon, Occupational Certification referred to was then received in evidence, marked Defendant's Exhibit A-11.)

Redirect Examination

By Mr. Sager:

Q. Showing you Plaintiff's Exhibit 18 for identification, Miss Schonborn, is that part of your draft board file in this case? A. Yes, it is.

Q. And how did you receive it?

A. We received it through our state headquarters.

Q. It is a part of your official file? [32]

A. Yes, it is.

Mr. Sager: We offer that in evidence.

(Testimony of Jean Schonborn.)

Mr. O'Brien: We object, if Your Honor please. It still does not show anything being written by the defendant. Not properly identified at all.

The Court: It is relevant to the issue here, good or bad faith. It is part of the official files.

Mr. O'Brien: But there is nothing here to show that the defendant wrote this. He says he don't remember writing it.

The Court: The defendant, upon direct or cross-examination, admitted that he sent a telegram about that time, but he does not recall and denies a portion of the contents of this particular telegram. Of course there would be another way to make proof by a subpoena duces tecum of the telegraph company, but it is a part of an official draft file. The case involves a draft case, and I shall rule that it is admissible and allow you an exception.

Mr. O'Brien: We object to it on the ground it is incompetent, immaterial and irrelevant, and not the best evidence.

Mr. Rogers: Particularly on the ground, if the Court please, it is not properly identified. This instrument can only be introduced to prove the fact which it states, and Mr. Lindstrom on the stand made the statement he does not remember making the statements.

The Court: Mr. Rogers, this case is considerably different from the ordinary criminal action. This case rests itself largely upon documentary proof as found in the draft files. The draft files are all official, and [33] if material is found in them

(Testimony of Jean Schonborn.)
to the issues that have been raised and is competent, it can be denied by the defendant, and the Court will permit you to recall him for that purpose.

Mr. O'Brien: He denied it already.

The Court: He admitted he sent a telegram, but denied a portion of it. It will be admitted and exception allowed.

(Whereupon, telegram referred to was received in evidence and marked Plaintiff's Exhibit No. 18.)

PLAINTIFF'S EXHIBIT No. 18

[Stamped]: White House, Washington, Mar. 7,
4:31 P.M., 1944.

WB24 NL Tacoma Wash Mar 7 1944

Honorable Franklin D. Roosevelt
White House

Wife always sick under doctors care can not work has nervous break down about to have another needs two major operations has 4th grade education doctors orders her to stay in bed if help can be had one child 3 months old supporting crippled father owe \$2000 in bills and mortgage government allowance entirely inadequate welder in shipyard 32 years old Pierce County Board 1 Puallup will not consider disregarded 3 doctors affidavits have filed for appeal but draft board dishonest appeal board once made them give us a 3A on account of not presenting doctors affidavit to them will not appear for pre induction as we consider it a trick of the board this board has far from

(Testimony of Jean Schonborn.)

taken its non dependency cases my wifes condition is such that she will never be able to support herself we know that these cases are taken into consideration please reclassify quickly as wifes nerves are at breaking point thanking you kindly

S. W. Lindstrom 2801 Portland Ave Tacoma Wash.

Mr. Sager: I would like to read it at this time, Your Honor.

The Court: Then, will that be all you have of this witness.

Mr. Sager: I think it is.

The Court: Very well.

(Whereupon, Plaintiff's Exhibit No. 18 was read to the jury.)

The Court: Anything further?

CHESTER J. CHASTEK,

produced as a witness on behalf of the Government, after being first duly sworn was examined and testified in rebuttal as follows:

My name is Chester J. Chastek. I am a Commander in the United States Navy. I am the Navy Liaison Officer to the State Director of Selective Service and assigned by him as a member of his staff to the billet of State Occupational Advisor.

(Testimony of Chester J. Chastek.)

My duties are to counsel with industry, the Selective Service boards and the appeal boards on manpower problems. I have been doing this for approximately three years. I am part of the Selective Service, but I am not a member of the appeal board. I had a telephone conversation with Mrs. Lindstrom on May 10th, 1944. I have the record of it in my log. [34] Mrs. Lindstrom was quite excited about the Selective Service status of her husband. She talked at great length about a background of human misery, and woe in the family, her own physical condition, his essentiality to the shipyards, by which he was employed. Her object in calling me was to secure assistance in attempting to get deferment for the defendant. I promised her to look into the matter, but counseled her to keep in touch with her local board. I did not tell her that I would get a deferment. I have no authority whatsoever to grant any deferment. The only one who has that authority is the local board and I so advised her.

Mr. Lindstrom called me on the 31st of July at 2:07 P.M. I recall distinctly that I asked him to get in touch with his local board. I told him that I had learned from the local board that he had not done certain things required of him, such as responding to requests of the local board with regard to physical examination. I advised him to contact his local board and satisfy them. He called to see me in an attempt to secure a deferment. I told him he would have to contact his local board for such deferment. I did not tell him I would get a defer-

(Testimony of Chester J. Chastek.)

ment for him. This conversation was on July 31st, 1944.

Cross Examination

By Mr. O'Brien:

I keep notes in reference to telephone calls and my notes do not show that in my phone conversation with Mr. Lindstrom on the 31st of July that he asked me about getting a deferment. It could be possible that he told me he was on deferment. I have a general sense of the conversation and as a general rule when these registrants call I give them practically all the same advice. [35]

FRANK ROBERT ARMSTED,

produced as a witness on behalf of the Government, after being first duly sworn was examined and testified in rebuttal as follows:

Cross Examination

By Mr. Sager:

My name is Frank Robert Armsted. I am a Major in the United States Marine Corps. I am a Marine Corps Liaison Officer with the State Selective Service headquarters in the State of Washington, assigned by the Director of Washington as Assistant Occupational Advisor and have been such for about two years. I am not a member of any appeal board. I am assigned to Selective Service for duty.

Plaintiff's Exhibit 12 has the stamp of appeal

(Testimony of Frank Robert Armsted.)

board No. 3 of Seattle. It is all one board, with three panels. The three indicates it is from Judge Jones' panel. Each panel contains five members. I am not an appeal board member. I review the appeal records before they go to the appeal panel, but I make no recommendation or comment on the regulations governing the case. I reviewed the Lindstrom case in the early part of April, when it was in the process of appeal. I saw the defendant in the latter part of May of this year. He came to the office in Seattle. His wife and another woman were with him and two small children about 4 or 5 years old. He came in and asked for Commander Chastek and Commander Chastek was not in and so I took care of the case. He said he was not classified properly and I asked him what his classification was and he said 1-A and then I said, "Why don't you appeal your case?" And he says, "It has been appealed." Then I went to the records and found the briefs of the appeal and found out it had been appealed on the basis of dependency, and the appeal [36] board had sustained the 1-A. He was there about half an hour, and he says, "That is not right, I want to appeal it again. My wife," he said, "has gall bladder trouble. She is on the verge of a nervous breakdown, and I don't think that classification is right."

I asked him then if he had an order to report for induction. He says, "Yes, got that order." "Well," I said, "if you have got an order from the board, you better obey it or you will find your-

(Testimony of Frank Robert Armsted.)

self in jail," and he said, "I won't do it. My classification is not right, and I am not going to report." And finally, at the end of the conversation, I said to him, "There is a new directive out, which might be of benefit to you. Why don't you go to your board and talk nice to them and they might be able to do something for you." And he said, "They don't even listen to me down there. I don't get any satisfaction from that board." "Well," I said, "I think you ought to go and talk to them. If I arrange a meeting for you, will you go and"—"No, I won't go," he said, and I said, "I will be glad to do it. I will call on the phone right now," and he said "I will go" and I called up the local board on the phone and talked to the clerk and asked her if she couldn't arrange a meeting for registrant Lindstrom to meet with the board and tell them his predicament, and then he left the office and I have not seen him until this trial.

Cross Examination

By Mr. O'Brien:

I know the time that Mr. Lindstrom was there. It was after the middle of May. I don't know definitely. It is possible it could have been in July.

[37]

[Title of District Court and Cause.]

CERTIFICATE

The time for filing defendant's proposed bill of exceptions having been duly extended herein by order of this court made and entered herein upon the 1st day of February, 1945, up to and including March 2, 1945;

It Is Hereby Certified and Ordered that the above mentioned bill of exceptions, pages numbered 1 to 37, contains all the evidence offered in the case of the United States of America vs. Sivear Willard Lindstrom, Cause No. 15653, and correctly shows the proceedings had on said trial, as I verily believe; and said bill of exceptions is hereby approved, allowed and settled and made a part of the record herein.

Given under the hand of the Judge of said Court, before whom said proceedings were had, this 1st day of March, 1945.

CHARLES H. LEAVY,
United States District Judge for the Western District of Washington, Southern Division

Approved:

HARRY SAGER

Attorney for Respondent

S. J. O'BRIEN

Attorney for Appellant

[Endorsed]: Filed March 1, 1945. [38]

[Endorsed]: No. 10964. United States Circuit Court of Appeals for the Ninth Circuit. Sivear Willard Lindstrom, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

Filed March 8, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10964

UNITED STATES OF AMERICA

Respondent,

vs.

SIVEAR WILLARD LINDSTROM,

Appellant.

NOTICE OF ELECTION TO ADOPT AS
POINTS ON APPEAL ASSIGNMENTS OF
ERROR APPEARING IN TRANSCRIPT

Comes now the appellant in the above action and hereby adopts as the points upon which appellant intends to rely upon this appeal the assignments of error appearing in the transcript of the record.

Dated this 13th day of March, 1945.

S. J. O'BRIEN

Attorney for Appellant

Receipt of service acknowledged this 13th day of
March, 1945.

HARRY SAGER

Asst. U. S. Attorney

D.B.

[Endorsed]: Filed March 22, 1945. Paul P.
O'Brien, Clerk.

